

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

KENTUCKY-AMERICAN WATER COMPANY, INC. ^{1/}

Employer

and

Case 9-UC-475

NATIONAL CONFERENCE OF FIREMEN AND
OILERS, LOCAL 320, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO ^{2/}

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
ORDER**

The Employer, Kentucky-American Water Company, Inc., a private employer, is engaged in the distribution of water throughout various counties in the state of Kentucky. The Petitioner, the National Conference of Firemen and Oilers, Local 320, Service Employees International Union, AFL-CIO, and the Employer are parties to two collective-bargaining agreements covering certain employees at the Employer's Lexington, Kentucky facility. The collective-bargaining agreements are referred to in the record as the inside and outside union contracts. The inside union contract, by its terms, is effective from December 17, 2001 to June 16, 2003, and covers employees in the following bargaining unit: "All the associates of the [Employer] covered by this Agreement in classifications of Clerk I, II and III." The outside contract, by its terms, is effective from November 17, 2001 to October 31, 2004, and covers employees in the following bargaining unit: "All associates covered by this agreement except for the associates covered by what is known as the Inside Contract group, non-union/non-management and management personnel."

In August 2001, the Employer acquired a new water distribution facility referred to in the record as the Northern District, where it employs at least three employees. The Petitioner filed the instant petition under Section 9(c) of the National Labor Relations Act seeking to clarify the existing bargaining units that it represents to include the employees employed in the Employer's Northern District. A hearing officer of the Board held a hearing on the issues involved and the parties filed briefs with me.

^{1/} The name of the Employer appears as amended at the hearing.

^{2/} The name of the Petitioner appears as amended at the hearing.

It appears from the record and its brief that the Employer opposes the clarification petition for two reasons. First, the Employer asserts that the petition is untimely. In the alternative, the Employer asserts that the employees in the Northern District do not share a sufficient community of interest with the existing bargaining unit employees to require their accretion into the existing bargaining units.

I have carefully considered the evidence and the arguments presented by the parties on the issues and have concluded for the reasons discussed in detail below that it would not be appropriate to clarify the existing units to include the employees sought by the Petitioner. The two extant agreements covering the Employer's inside and outside employees clearly define the bargaining units. Moreover, the Northern District had been brought into the Employer's operation before the recent inside and outside agreements were executed. During the negotiations resulting in those agreements, the unit placement issue of the Northern District employees was not raised. Finally, the parties did not agree, during contract negotiations, to leave the unit placement of the Northern District employees to a subsequent clarification proceeding. Therefore, I shall dismiss the clarification petition.^{3/}

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. I will then present, in detail, the facts and the reasoning that supports my conclusions.

I. OVERVIEW

It appears from the record that in approximately 1999, the Employer began negotiations to acquire the Tri-Village Water Company, which is referred to as the Northern District. Sometime before August 2001, the record does not reflect the precise date, representatives for the Employer and the Petitioner met to discuss a number of topics, including the Employer's pending acquisition of the Northern District. During this meeting, the Petitioner asked whether they could go to the Northern District facility and "try to get these people to sign cards to join the Petitioner." In response to the Petitioner's question, the Employer explained that because they had not yet acquired the Northern District and were still in negotiations, they wanted the Petitioner to wait so as not to "mess up negotiations."

About August 2, 2001, the Employer acquired the Tri-Village Water Company and later renamed it the Northern District. Following the acquisition, about August 13, 2001, the Employer sent a letter to its employees informing them that it had completed the acquisition of the water systems of Tri-Village Water District. Shortly thereafter, the Petitioner requested a meeting with the Employer to discuss the employees at the newly acquired Northern District. During this meeting the Petitioner told the Employer that they believed that the Northern District employees were "automatically" included in the

^{3/} In view of my finding that the clarification petition is untimely, it is unnecessary for me to decide whether the Northern District employees share a sufficient community of interest with the existing bargaining units to warrant their inclusion in those units.

existing bargaining units, but the Employer disagreed pointing out the distance that separated the two facilities and the difference in wages.

In approximately October 2001, the Petitioner and the Employer began negotiations for a new collective-bargaining agreement. On November 17, 2001, they entered into two collective-bargaining agreements covering the inside and outside units, effective, as stated earlier, on November 17 and December 17, 2001, respectively. The record shows that during the negotiations the Petitioner and Employer did not discuss the inclusion of the Northern District employees in either of the existing bargaining units.

II. APPROPRIATENESS OF THE PETITION

It is well established that the Board will not process a clarification petition during the term of an existing agreement which clearly defines the unit unless: (1) the petition is filed shortly after a contract is executed, (2) the unit placement issue was raised during negotiations, (3) the parties could not reach agreement on the disputed classification and the unit clarification petitioner did not abandon its position in exchange for contract concessions. *Wallace-Murray Corporation*, 192 NLRB 1090 (1971). The Board's rationale for this policy is to avoid unnecessarily disrupting established bargaining relationships. *Edison Sault Electric Co.*, 313 NLRB 753 (1994); *Arthur C. Logan Memorial Hospital*, 231 NLRB 778 (1977).

Well established Board law compels the dismissal of the Petitioner's petition in the instant case. For example, in *Edison Sault Electric Co.*, supra, the parties reached a collective-bargaining agreement in late October or early November 1992, and the membership ratified the contract on about November 10, 1992. Thereafter, on January 22, 1993, the employer filed a unit clarification petition in which it sought to exclude the classification of "foremen special" (superforemen) from the unit on the ground that they were supervisors. The Board dismissed the petition as untimely filed because the foremen had not been discussed at the bargaining table, the foremen had been included in the unit for 20 years, and the employer had not raised the issue of their status until after the new contract had been ratified.

The critical factors relied on by the Board to dismiss the petition in *Edison Sault Electric Co.* are present here rendering the Petitioner's petition untimely. It is clear that the instant petition was filed during the term of the two extant agreements. Further, the petition was not filed shortly after the extant agreements were executed. Rather, the petition was filed on August 14, 2002, almost 10 months after the extant agreements were executed. In addition, the bargaining units in the existing agreements are clearly defined.^{4/} Finally, the unit placement issue of the Northern District employees was not raised during contract negotiations. Indeed, it is undisputed that there was no discussion of the unit placement of the Northern District employees during contract

^{4/} Although the Petitioner argues in its brief that the Employer has previously allowed employees of prior acquisitions to be accreted into the existing bargaining units, this standing alone is an insufficient basis to allow the Petitioner to untimely raise this unit placement issue by the filing of the instant petition.

negotiations. Under such circumstances, the petition is untimely and the Petitioner has not cited any cases requiring a contrary finding. Accordingly, I will dismiss the petition.

III. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussions above, I conclude and find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The petition seeking to clarify the existing units to include the Northern District employees is untimely.

IV. ORDER

IT IS ORDERED that the petition herein be, and it hereby is, dismissed.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board addressed to the Executive Secretary, 1099 14th Street, N. W., Washington, D. C. 20570-0001. This request must be received by the Board in Washington by 5 p.m. EDT on **October 22, 2002**. The request may not be filed by facsimile.

Dated: October 8, 2002

/s/ Richard L. Ahearn

Richard L. Ahearn, Regional Director
National Labor Relations Board
Region 9

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